

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 FORT WORTH DIVISION
4 UNITED STATES OF AMERICA) CASE NO. 4:21-CR-00083-P
5)
6 vs.) FORT WORTH, TEXAS
7) SEPTEMBER 23, 2021
8 ZACKEY RAHIMI) 9:15 A.M.

VOLUME 1
TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE MARK T. PITTMAN
UNITED STATES DISTRICT COURT JUDGE

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PROCEEDINGS

(September 23, 2021, 9:15 am.)

6 Would the attorneys please identify themselves.

7 **MR. GATTO:** Good morning, Your Honor. Frank Gatto
8 for the United States. We're ready to proceed.

9 MS. TAFT: Good morning, Your Honor. Rachel Taft
10 for Mr. Rahimi.

15 **THE DEFENDANT:** Zackey Rahimi.

16 **THE COURT:** Do you have a middle name? (No response)
17 Do you have a middle name?

22 You-all can be seated while I make my preliminary
23 remarks.

24 Mr. Rahimi, you'll recall you appeared before the
25 U.S. Magistrate Judge here in Fort Worth on May the 26th of

1 2021. At that time, Judge Cureton entered a plea -- or you
2 entered a plea of guilty before Judge Cureton to Count 1 of
3 the indictment charging you with firearm possession while
4 under a domestic violence restraining order, in violation of
5 18 United States Code 922(g)(8) and 924(a)(2).

6 You'll also recall, Mr. Rahimi, that Judge Cureton
7 also found that your plea of guilty was a knowing and
8 voluntary plea supported by an independent basis in fact
9 containing each of the essential elements of the offense.

10 You told the Judge on that day that you understood
11 the elements of the offense, you also agreed to the accuracy
12 of your factual resume, and you also admitted that you had
13 committed all of the essential elements of the offense.

14 Accordingly, on June the 10th of this year, I
15 entered an order accepting your plea and adjudging you guilty
16 of the crime alleged in the indictment against you. There was
17 not a plea agreement in this case.

18 So, I'll ask you, Ms. Taft, did you and Mr. Rahimi
19 receive in a timely manner a copy of the presentence
20 investigation report, as well as the addendum to that report?

21 *MS. TAFT:* We did, Your Honor.

22 *THE COURT:* And have you had a chance to review both
23 of those documents very carefully with Mr. Rahimi?

24 *MS. TAFT:* We have, Your Honor.

25 *THE COURT:* Did the Government receive those in a

1 timely manner, Mr. Gatto?

2 **MR. GATTO:** Yes, sir.

3 **THE COURT:** All right. Let me walk you through my
4 rulings on your objections, at least my tentative rulings,
5 Ms. Taft.

6 I believe you lodged one objection to the
7 presentence report, specifically with regard to paragraph 51
8 in the determination of what relevant conduct should be taken
9 into consideration.

10 I've taken a look at your objection, as well as the
11 dates for the conduct at issue, and I believe that it should
12 be overruled.

13 However, at this time I'll allow you to make any
14 argument you'd like to make. But that's my initial
15 inclination with regards to your objection to paragraph 51.

16 **MS. TAFT:** Yes, Your Honor. I would like to make
17 some additional statements.

18 **THE COURT:** Okay.

19 **MS. TAFT:** The offenses that occurred on December
20 9th, 2019 do qualify as the same course of conduct, but they
21 are part of an ongoing series of offenses. So, looking to the
22 three factors that the Fifth Circuit has used to determine
23 relevant conduct, 50 to 52 paragraphs in the PSR do meet all
24 of them. Factual similarity, irregularity, repetitive nature
25 of the offenses and the temporal proximity, which has a

1 one-year threshold as well.

2 I think neither the Government's response, nor the
3 PSR really addresses any of these factors. Instead, in the
4 addendum, it specifically addressed that because Mr. Rahimi
5 was not under a protective order on December 9th, 2019, and
6 was not a prohibited person at the time of the offense, the
7 three charges are not relevant conduct. But whether he was a
8 prohibited person at the time or not is not something that the
9 guidelines or the Fifth Circuit asks us to consider when
10 determining relevant conduct.

11 Paragraphs -- contained in paragraphs 50 to 52, they
12 were offenses, such that he's being charged for them on the
13 state level. And I think it's important because under Section
14 5G1.3(c) of the guidelines, it instructs the Court to run a
15 Federal sentence concurrent to any anticipated relevant
16 conduct to state court sentences.

17 I know the PSR leaves that guideline section out of
18 paragraph 88 and instead cites just to *U.S. v. Brown*. But the
19 guidelines very plainly state that pending state cases that
20 are relevant conduct should be run concurrent. So, it's very
21 important that, you know, we make that determination in order
22 to have that run concurrent.

23 I would also point out that going through the list
24 of offenses in paragraph 88, I noticed, just yesterday, that
25 paragraph 55 it listed as not related to the current offenses.

1 This is an aggravated assault charge that occurred on
2 November 12, 2020, it's well within the one-year time period.
3 And while there's no police report for that offense, even a
4 brief description of the aggravated assault really lends it
5 towards being relevant conduct to be included as a concurrent
6 sentence as well.

7 *THE COURT:* All right. Thank you, Ms. Taft.

8 I'd like to hear from Mr. Gatto. Mr. Gatto, she's,
9 essentially, made a couple of points. She argues that
10 although the restraining order wasn't entered until February
11 of 2020, because this was ongoing conduct, the actions that
12 occurred on December the 9th of 2019 should be considered as
13 part of the relevant conduct, even though they occurred, what,
14 three months prior?

15 You also have this issue she's pointed out with the
16 November 2019 offense and how that would be counted with
17 regards to the relevant conduct. And as we both understand
18 from the argument she's just made, it's very important because
19 it affects how we deal with the pending state charges.

20 So, tell me how you'd like to proceed.

21 *MR. GATTO:* Well, and that last point, I think, is
22 the crux, really, of it.

23 Just briefly I will say, I do tend to agree with the
24 PSR addendum. I think the fact that he wasn't prohibited on
25 December 9th kind of makes it difficult to, technically,

1 include that as relevant conduct under 1B1.3. I think, even
2 though it said it contemplates the conduct that they're
3 bringing in is relevant conduct, would be connected to the
4 offense of prohibited person in some way and is relevant based
5 on those factors, and he wasn't prohibited.

6 That being said, I really think the easiest way to
7 take care of this, in light of my upward variance motion, in
8 light of my asking the Court to consider all of this conduct
9 in deciding to upward vary, the real crux about her argument,
10 and I think her goal, is that she wants to fall under the
11 guidelines telling the Court that typically when you include
12 relevant conduct in there you should consider with state
13 cases, and there's a state possible anticipated sentence, you
14 should run it then concurrently.

15 Now, I don't know why the guidelines changed in
16 5G1.3, to sit there and take out the requirement that it
17 actually increase the guideline, because I think if you go
18 before that the whole purpose is, if appropriate, to mitigate
19 double punishment. The Court is going to punish somebody for
20 those state offenses and being punished again for the same
21 state offenses. That's why the guidelines recommend, at that
22 point, the Court consider running it concurrent.

23 I think the guidelines use more mandatory language,
24 but the case law is clear that it's not binding on the Court,
25 but still wants you to consider that. The guidelines have

1 changed, for some reason, saying they no longer have to
2 increase the guideline amount and so forth and are still
3 qualified under 5G1.3. I saw the commentary on that, and to
4 me it just says to clear up the confusion, and I'm actually
5 more confused than I'm not.

6 Because really the crux of it is, I'm asking you to
7 consider all of this conduct, which is state conduct, stuff
8 that he may very well be punished for in the state, to
9 increase his punishment above the guideline range of 120
10 months. So, the spirit of really what 5G1.3 is, I think
11 ultimately the Court can say, Listen, it may not technically
12 be relevant conduct, but in light of the Government's motion
13 and if I'm going to do this, then I will consider the
14 guideline's instruction that it should run concurrent with the
15 state.

16 And then you can decide whether or not, under the
17 3553 *Alford* factors and where he would land on a Federal
18 sentence and how much punishment you give or take in there,
19 but if you still think it's appropriate to run consecutive for
20 the 3553 factors or whether you think now it's appropriate to
21 run it concurrent.

22 I think it would resolve her issue, really in the
23 end, if you sit back and say, Regardless of whether it's
24 relevant conduct, if I'm going to take this conduct into
25 consideration in ultimately punishing you, then I will at

1 least consider the guideline counsel which is running it
2 concurrent to those anticipated state sentences in these
3 cases.

4 **THE COURT:** All right. Let me take the easy way out
5 for now, and then when you argue your variance and I state the
6 sentence we'll take up the pending state charges.

7 Ms. Taft, based on the argument that I've heard
8 today, as well as the papers before me, I'm inclined to
9 overrule the objection. I don't see how that this would be
10 part of the same conduct if it occurred in December of 2019,
11 and you don't have a protective order in place until February.
12 So, I am going to overrule the objection.

13 However, you've made some interesting points with
14 regards to concurrent versus consecutive and how we consider
15 those for the purposes of an upward variance or a guideline
16 sentence and how we do that. So, we'll take that up at the
17 time. But as far as your objection itself, I am going to
18 overrule it. And that's going to be my final ruling.

19 So, let me make some findings with regards to the
20 PSR and the addendum.

21 **MS. TAFT:** Your Honor, if I could. I have one quick
22 oral objection to make briefly, if the Court will allow it.

23 **THE COURT:** Go ahead.

24 **MS. TAFT:** Thank you, Your Honor.

25 I would just object, briefly, to paragraphs 50 to

1 60, which detail Mr. Rahimi's pending state charges.

2 **THE COURT:** You didn't object to these prior to the
3 hearing today, did you?

4 **MS. TAFT:** I did not, Your Honor.

5 **THE COURT:** So, you didn't lodge a written objection
6 to these?

7 **MS. TAFT:** I did not, Your Honor.

8 **THE COURT:** You're making them here today?

9 **MS. TAFT:** Yes.

10 **THE COURT:** So, you're objecting to paragraphs 50
11 through 60 related to all the conduct that's listed; is that
12 correct?

13 **MS. TAFT:** Yes.

14 **THE COURT:** Do you think that that's fair to do to
15 the Government or to the Court, that you wait until the day of
16 sentencing to bring this up?

17 **MS. TAFT:** Your Honor, I'm just trying to preserve
18 for appeal.

19 **THE COURT:** Well, if you wanted to preserve it for
20 appeal you should have filed something. So, you waited until
21 the day of sentencing. We have a sentencing that's been
22 scheduled now for several weeks and now you're springing this
23 on us.

24 You know, if you really want the Court to be able to
25 examine and look at the merits of an objection, you need to

1 give the Court time to do it. And that's the key to
2 preservation of error, Is did you properly present it to the
3 Court in order for the Court to read and review and make an
4 informed ruling? But when we wait until the day of, in the
5 middle of a hearing, and we decide to lodge multiple
6 objections, it really puts me in a difficult spot.

7 But go ahead and state your objection as
8 specifically as possible, and I will do my best to make an
9 informed decision when I rule on those.

10 Go ahead.

11 **MS. TAFT:** Yes, Your Honor.

12 We would just object to those -- those paragraphs as
13 they lack to show reliability. They're just police reports.

14 And that is all I have in that regard.

15 **THE COURT:** All right. Mr. Gatto, would you like to
16 make a response?

17 **MR. GATTO:** Well, I do believe -- well, first off,
18 the case law is clear on that. The information in the PSR is
19 presumed reliable, the burden is on the defendant to present
20 rebuttal evidence. And there's a particular case that says
21 mere objection is insufficient as rebuttal evidence. So, just
22 based on that, it's a mere objection, it would be insufficient
23 for her to rebut the presumption of the information that it is
24 true.

25 I am prepared here today. I submitted a lot of

1 those reports in my upward variance motion, as well as the
2 videos of that evidence. But I do have a case agent here
3 prepared, so if there's any findings of fact and contested
4 issues of fact that come up and need further resolution, the
5 Government is prepared to present that testimony.

6 But at the moment, just based on the mere objection
7 and her requirement under case law to actually present
8 rebuttal evidence, I think you can overrule the objection.

9 *THE COURT:* Let me go ahead and make my ruling.
10 Thank you, Mr. Gatto.

11 I do appreciate your objection, Ms. Taft, but I do
12 believe that it should be overruled for the reasons that I've
13 previously stated. I don't believe that you rebutted the
14 presumption and that the factual statements that are there in
15 those paragraphs that you objected to are supported, in my
16 opinion. And next time be sure you file your objection in
17 writing.

18 All right. With that finding in mind, the
19 defendant's objections are overruled. I will adopt as my
20 final findings of fact the statements of fact made in the
21 presentence report, subject to and including the changes and
22 qualifications made by the addendum to the presentence report
23 and that I made in response to the objections to the
24 presentence report.

25 And after having considered the conclusions

1 expressed by the probation officer in the presentence report
2 as to the appropriate guideline calculations and after having
3 considered the objections thereto, I determine the appropriate
4 guideline calculations in this case for Mr. Rahimi are as
5 follows: Total offense level of 23, criminal history of I, an
6 imprisonment range under the guidelines of 46 to 57 months, a
7 supervised release range of one to three years and a possible
8 fine range of \$20,000 to \$200,000 plus costs of imprisonment
9 and supervision.

10 I do, obviously, want to give you -- the defendant a
11 chance to make your presentation. However, I think it's best
12 at this time to take up the Government's motion for an upward
13 variance, and then I will turn it over to the mitigation stage
14 and I'll let you have an opportunity to speak, Ms. Taft,
15 outside of the motion for upward variance and also give your
16 client an opportunity to speak.

17 I think it's worthwhile me noting at this time that
18 I did receive a letter from the defendant's father, which I
19 had an opportunity to read and review prior to today's
20 hearing. But I think it best, before we get any mitigation
21 argument or testimony, that we hear from Mr. Gatto on his
22 motion.

23 **MR. GATTO:** Yes, Your Honor.

24 And as you know, I submitted the exhibits and the
25 videos to the Court. So, I'm not planning on playing or

1 presenting additional evidence, unless the Court believes it's
2 necessary or appropriate. And so that's why I have everything
3 prepared just in case.

4 *THE COURT:* I did have an opportunity to review
5 everything prior to today's hearing, including the videos.

6 *MR. GATTO:* Okay. So, Your Honor, in going on that,
7 I think I was pretty exhaustive in the upward variance. But I
8 want to say, you know, you're obviously required to consider
9 all of the 3553(a) factors, but that doesn't mean one
10 particular factor can't be glaring in this case. To me, the
11 one particular factor glaring in all of this is that
12 protection of the public.

13 You're talking about six separate shootings here.
14 One that started in December, which led to him becoming a
15 prohibited person. And then you've got a cluster of five
16 within a month's time frame. And to me that first video,
17 where he causes this accident, gets out and just starts
18 shooting, is one of the most bone-chilling videos for me to
19 watch and see. If that doesn't send chills down anybody's
20 spine seeing that, I don't know of much else that can.

21 To just come out and cause this accident, pull out
22 your gun and just start emptying your clip into that other
23 person's car, to me, I think, that truly shows there is a
24 grave and callous disregard of human life.

25 And as mentioned in there, I think it's a miracle of

1 God that he hasn't killed anybody. I think it's a miracle of
2 God that he hasn't hurt anybody. And I really think it would
3 be a matter of time before he does, and that's why I'm asking
4 this Court to delay that time as long as you can under the
5 statute, which is the 120 months.

6 I know -- I think I read in my colleague's
7 sentencing memo about how there's really no need for
8 deterrence here, he spiraled out of control when he got this
9 protective order and he couldn't see his child anymore. To
10 me, I think that proves, too, that deterrence would be your
11 second factor here, because here he is, he's got this, you
12 know, he has this domestic violence incident with the mother
13 of his child, and it's a pretty brutal one, and it causes her
14 to go get a protective order from him, causes him not to see
15 his child.

16 And instead of that being the wake-up call that it
17 should have been to say, Hey, I've got some issues here, I
18 need to resolve this if I want to be a good father in my
19 child's life and either repair this relationship with this
20 woman or at least repair, in a sense, where we can be parents
21 together to our child, he goes off on this violent spree. And
22 if that doesn't deter him, then the only thing left for us to
23 do is the 120, is to also try and see that that drives home a
24 message.

25 But the overriding factor is we need to protect the

1 public. We're talking a series of six total shootings, five
2 within a month's time frame. Another video with him shooting
3 a gun in the air with his children right there. Those bullets
4 are going to come down somewhere. How many reports has the
5 Court read where children are shot by stray bullets? And
6 that's particularly what happens there a lot of times. Thank
7 God it has not happened in this case.

8 But I would submit to the Court, the mere fact that
9 we are lucky, he's lucky he hasn't killed anybody or hurt
10 anybody, doesn't mean those were not serious offenses, in
11 hindsight. Doesn't mean that he's not a dangerous person that
12 we need to protect the public from. It actually means he is,
13 and that's the crux of my defense and my request for 120
14 months.

15 **THE COURT:** All right. Thank you, Mr. Gatto.

16 Ms. Taft, would you like to respond? And I think
17 what I'll do, I'll let you respond, and then I'll defer my
18 ruling, and then you can go into your mitigation arguments,
19 including those that are in your sentencing memorandum.

20 **MS. TAFT:** Your Honor, I will just postpone until
21 mitigation.

22 **THE COURT:** That's what I want you to do.

23 **MS. TAFT:** Perfect.

24 **THE COURT:** No, now.

25 **MS. TAFT:** Nothing now, Your Honor.

1 *THE COURT:* All right. Then would you like to make
2 any remarks on behalf of your client?

3 *MS. TAFT:* I would, Your Honor.

4 *THE COURT:* Okay.

5 *MS. TAFT:* Your Honor, we are requesting a sentence
6 within Mr. Rahimi's guideline range for a number of reasons.

7 First off being his criminal history. He is in
8 category I, with one prior conviction for which he served a
9 six-day sentence on that.

10 I understand the Government is urging the Court to
11 use the conduct alleged in the pending state cases as
12 justification for the maximum sentence in this case. But the
13 heart of this, paragraphs 50 to 60, do remain pending at the
14 state level. He has pleaded guilty Federally to possessing a
15 firearm as a prohibited person. And I understand that the
16 case law and guidelines do not force the Court to wear
17 blinders as to everything else, relevant conduct, pending
18 offenses.

19 But this is not a case where the PSR calls for an
20 upward departure/upward variance based on years or decades of
21 convictions where someone has not repeatedly learned their
22 lesson and therefore warrant the higher criminal history score
23 and the higher sentence in general.

24 But here Mr. Rahimi hasn't pleaded guilty, nor has
25 he been found guilty of the state cases. And I'm sure that

1 once he's transferred back to the state he will stand trial on
2 those, enter into some sort of plea. But he has a right,
3 under the Constitution, to have the trial and to have that
4 state process play out. And so the state is in a unique
5 position to handle those pending cases and to punish him for
6 those pending cases. I think it's noteworthy that the
7 punishment on the state level is actually much harsher than
8 here, with the range of 2 to 20 years in the aggravated
9 assaults.

10 So, the Constitution and respect for our legal
11 system demand that the state process play out, and the pending
12 unproven state cases should not be given necessarily the
13 weight that the Government asks for them to receive. The
14 guidelines to account for the relevant conduct, he does
15 receive a plus-four-level enhancement, bumping him from the
16 range of 30 to 37 up to 46 to 57 months.

17 And looking to the guidelines, even if Mr. Rahimi
18 had been charged Federally with an aggravated assault, the
19 guidelines still would not warrant a sentence much different
20 than what we're looking at under the firearms guidelines. The
21 aggravated assault guideline is found in Section 2A2.2.
22 Starts out with the base offense level of 14. He received
23 five points for discharge of a weapon. And with acceptance of
24 responsibility that put him at level 16. That's lower than
25 what he's looking at under the firearms guidelines section.

1 And even assuming the worst-case scenario, under
2 that section of the guidelines, and it's if there's permanent
3 bodily injury, he would still only warrant -- that still only
4 warrants an extra seven levels. So, that would put him at,
5 with acceptance of responsibility, at a level 23, which is
6 exactly where he is right now under the firearms guideline.

7 So, I think even the guidelines themselves don't
8 call for a maximum ten-year sentence here where there is
9 permanent injury, worst-case scenario in an aggravated
10 assault. Here we don't have that charge, we don't have those
11 guidelines. And the guidelines call for a sentence that is
12 significantly lower than what the Government is asking for.

13 To the Government's credit, they have been very
14 forthcoming with me about their intention to request a maximum
15 sentence here. But I think their solution on what to do with
16 Mr. Rahimi is to lock him up for as long as possible, and
17 that's simply not a long-term solution. Mr. Rahimi is 21 now.
18 He's young and impressionable, and one day he's going to be
19 released back to the community.

20 And so when fashioning a sentence, I would ask the
21 Court to consider, not just punishment and deterrence as the
22 Government requests, but also rehabilitation as called for
23 under 3553(a)(2). Even with a five-year sentence, if
24 Mr. Rahimi were to be released in his mid 20s, at that time
25 we would see full formation of his frontal cortex and we would

1 see, certainly, just by nature of maturity level, a different
2 person when he is released.

3 And so, I think, throughout his life, Mr. Rahimi has
4 had issues. He's never had access to anger management, to
5 mental health treatment to address those issues; but he does
6 plan on doing that while he is in the BOP. I know the time
7 Mr. Rahimi has spent in custody in Johnson County Jail has
8 been very difficult for him. He's talked to me about some of
9 the inmates he's met there, who don't know their children,
10 their parents have passed away and they weren't able to be
11 there, and he doesn't want that for himself. He does want to
12 make a change, turn things around, get an education.

13 He's lucky enough to have family support. His
14 parents wanted to be here today, but they were concerned for
15 their health that it wasn't the best idea. But they do
16 support him wholeheartedly.

17 Last, I would request for the sentences to be served
18 concurrent to the pending state cases, and request that the
19 Court adjust whatever sentence that it intends to impose by
20 five months to account for the time that Mr. Rahimi has spent
21 in Federal custody while he's been in primary state custody.
22 We would persist with our request for a sentence within
23 Mr. Rahimi's guideline range.

24 *THE COURT:* All right. Thank you, ma'am.

25 I'd like to give Mr. Rahimi an opportunity to speak.

1 **THE DEFENDANT:** Your Honor, I apologize for what I'm
2 responsible for, and I apologize to my family for putting them
3 in pain, stress, tears and the struggle. This has been the
4 longest I have ever been in jail, and I have for sure learned
5 my discipline (*sic*); and mostly what has been hurting me the
6 most is being away from my family.

7 I've been through a lot. From my young age being
8 bullied my whole school life, from elementary to high school,
9 being used, took advantage, wearing the same clothing almost
10 every day and to be able to have my family spend less money to
11 try to maintain. You know, the way I'm being very friendly to
12 everybody, but I mainly stopped being very social becoming
13 antisocial and a loner because of how society was doing me.

14 My family struggling and having financial problems
15 and losing my closest beloved family members in my life. My
16 family has always been very loving and caring, great, teaching
17 me what's right and wrong, not to do. And I would be on the
18 same back to my family and baby mother and my precious child.
19 But I was being ignorant being around the wrong people that I
20 thought for once were friends. And my family knew it wasn't
21 right, very bad influence, and ended up using me, taking
22 advantage, creating all the problems, issues and troubles on
23 me.

24 I know the PSR says the terrible things, but that is
25 truly not me. I am a very good human being, but it's my

1 mistake for being around those wrong people and not listening
2 to my family. I very regret not listening to my family,
3 because this has been the most pain I've ever been, away from
4 my family, not able to be there for them, not able to support
5 them and maintain them financially, and losing my beloved
6 grandmother, not able to spend her last moments with her.

7 I'm a new man, having faith and seeking only the
8 straight pathway and staying very close to the Lord. When I'm
9 finished and released, I'm doing what's right and for the
10 best. I'm going to obey the laws, be a rightful citizen for
11 the community, go to Universal Technical Institute to study to
12 become an automobile engineer. Meanwhile, I have a great job
13 manufacturing automobiles at General Motors. Stay completely
14 away from all bad influence, wrong people and all bad things,
15 especially firearms.

16 But I'm staying firm on obeying the laws and making
17 sure to stay away from all wrong things. I'm definitely for
18 sure not looking back on my past, to do right, never come back
19 to jail, never, ever being away from my family again. I want
20 to make sure to be able to be with my precious family and
21 child all the time. They are everything to me. I want to
22 make sure they stay proud and peaceful and keeping a great
23 father figure to my precious child, showing him the right way.

24 Because my family are getting older day by day and
25 sick. It hurts my soul to see them go through this, not able

1 to spend time, seeing me finish college and marry the right
2 woman to have one big family. But I want to make sure to do
3 all of this and everything the right way soon as I'm finished
4 and released. I won't ever let my family down and won't let
5 you down, Your Honor.

6 I apologize again, and thank you for your time.

7 *THE COURT:* All right. Thank you.

8 Anything further, Ms. Taft?

9 *MS. TAFT:* Nothing further, Your Honor.

10 *THE COURT:* Mr. Gatto, I'll give you the last word.
11 Is there anything you'd like to add?

12 *MR. GATTO:* Yeah. I want to quickly -- some other
13 guidelines provisions were bought up. If you look at 53, of
14 the guidelines, 2A2.1, assault with attempt to commit murder
15 and attempted murder. It says, at 33, If the object of the
16 offense would have constituted first-degree murder.

17 Is there any question in the Court's mind, in that
18 first video, that if he would have killed that guy that he had
19 caused the wreck in that car that that would not have been
20 first-degree murder? There's clearly intent there. He comes
21 out and he points the gun right at him and he unloads that
22 clip, and so forth.

23 So, that's at 33. And if you take that and give him
24 three levels at a 30, one, he's at 97 to 121 months.

25 *THE COURT:* All right. Thank you, Mr. Gatto.

1 I need to go off the record and talk with probation.
2 We have several state cases, I want to make sure that I state
3 correctly the sentence when I state it. So, I need to do some
4 review on how to properly handle that. We'll go off the
5 record momentarily.

6 *(Short recess taken)*

7 **THE COURT:** Let's go back on the record in the
8 sentencing of United States vs. Zackey Rahimi.

9 Mr. Rahimi, I'll need you to please rise, I'll be
10 stating the sentence at this time.

11 I wanted to take a break to, again, review the
12 presentence investigation report and the relevant addenda and
13 the rest of the files and the arguments that I've heard this
14 morning from Mr. Gatto and Ms. Taft.

15 In particular, I want to be sure, given the large
16 number of state offenses that Mr. Rahimi is subject to, that I
17 correctly, at least in my mind, determine what's relevant
18 conduct, what's unrelated conduct and what can be taken into
19 consideration with regard to the state sentence. So, I did
20 want to be sure to doublecheck those and make any changes, if
21 necessary.

22 I do believe at this time I am satisfied with regard
23 to how the Court should consider the state sentences and
24 whether they should be served concurrently or consecutively to
25 the sentence that the Court will be imposing.

1 Before I state the sentence, Ms. Taft, do you have a
2 recommendation for placement?

3 **MS. TAFT:** Yes, Your Honor. We would request
4 placement, I believe, at Seagoville or Pollock.

5 **THE COURT:** Or what, ma'am?

6 **MS. TAFT:** Seagoville or Pollock.

7 **THE COURT:** P-O-L-L-A-C-K.

8 **MS. TAFT:** I believe it's O-C-K.

9 **THE COURT:** I don't know, given the -- let's just
10 say the violent nature of what we have before us, whether
11 he'll qualify for placement there, but I'll certainly make
12 that recommendation.

13 Any other requests that you have?

14 **MS. TAFT:** No, Your Honor.

15 **THE COURT:** Okay. Thank you, ma'am.

16 At this time I will state the sentence determined
17 after my consideration of all the factors set forth in Title
18 United States Code, Section 3553(a), including especially
19 the advisory sentencing guidelines issued by the United States
20 Sentencing Commission, as well as the conduct that was
21 admitted by the defendant in his factual resume.

22 I will give Mr. Gatto and Ms. Taft a chance to state
23 any legal objections that they have before I finally impose
24 the sentence.

25 I do want to say that I do believe that an upward

1 variance is in order. Although, I don't believe the amount
2 requested by the Government is appropriate, and I will state
3 my reasons for it. And I also need to state that even if the
4 Government had not filed an upward variance, I believe that
5 the facts and circumstances of this case do justify one, and
6 I'll state those reasons.

7 Let me state the following, it is the judgment of
8 the Court that the defendant, Zackey Rahimi, in Case Number
9 4:21-CR-83-P, is hereby committed to the custody of the
10 Federal Bureau of Prisons for a period of 73 months. This
11 sentence takes into account the five months that he has served
12 on his state court custody. I considered that when
13 formulating the sentence, and I shaved five months off of what
14 I was originally going to do to take into account that time.

15 The Court makes the following findings: This
16 sentence shall run consecutively to any future sentence which
17 may be imposed in Case Numbers 1635415, 1635418, 1635420 and
18 1654868 out of Tarrant County, Texas, Criminal Court No. 5;
19 and Case Numbers 1657182D and 1678799D, out of Criminal
20 District Court No. 3, in Tarrant County.

21 However, this sentence shall run concurrently with
22 any future sentence which may be imposed in Case Numbers
23 1672225 and 1671482 out of Tarrant County, Texas, Criminal
24 Court No. 5; and Case Numbers 1672223D, 1676245D and 1671143D
25 out of Criminal District Court No. 3, in Tarrant County,

1 Texas.

2 The Court does not order a fine or the cost of
3 incarceration, because the defendant does not have the
4 financial resources or future earning capacity to pay a fine
5 or the costs of incarceration. Furthermore, restitution is
6 not ordered because there is no victim in this case other than
7 society at large.

8 The Court is also making the following forfeiture
9 order pursuant to 18 United States Code, Section 924(d) and
10 28 United States Code, Section 2461(c). It is hereby ordered
11 that defendant's interest in the following property be
12 forfeited to the United States of America: A Glock, Model 21
13 Gen 4, .45-caliber pistol, bearing Serial No. YBX386, and a
14 Century Arms, Model C308 Sporter, .308-caliber rifle, bearing
15 other Serial No. C308E32588.

16 It is further ordered that upon release from
17 imprisonment, Mr. Rahimi be placed on a term of supervised
18 release for a period of three years. While on supervised
19 release, Mr. Rahimi, you're going to be subject to the
20 mandatory conditions of release listed in 18 United States
21 Code, Section 3583(d), as well as the standard conditions
22 listed in 5D1.3(a) of the United States Sentencing Guidelines
23 Manual.

24 In addition, you will be subject to certain
25 additional terms of supervised release. Those additional

1 terms were set forth in a separate order that was provided to
2 you prior to going on the record this morning. And that order
3 has now been returned to me with your signature, Mr. Rahimi.
4 With your signature on that order, you've acknowledged that
5 you received those additional terms, you waive them being read
6 in open court here this morning. But most importantly, during
7 that three-year term of supervised release, you agree to be
8 bound by all of those terms and subject to revocation and
9 possible reincarceration for any violation of them. All of
10 these conditions are set forth in the presentence report in
11 this case in Part G.

12 It's further ordered that defendant pay a special
13 assessment in the amount of \$100.

14 In this case, the Court determined that an upward
15 variance is warranted because Mr. Rahimi has a history of
16 criminal behavior beginning at age 11, and this behavior has
17 continued until his arrest for the instant offense at the age
18 of 21. The defendant has been involved in multiple shootings
19 since March of 2020. Additionally, he has a history of
20 assaultive conduct resulting in a protective order, which he
21 showed a disregard for by violating.

22 Since the first known shooting occurred in March of
23 2020, the defendant has been involved in a series of shootings
24 lasting from November of 2020 to January of 2021. The
25 defendant has continuously possessed firearms while

1 prohibited, and his use of firearms puts him at great risk to
2 the community. As Mr. Gatto pointed out in his motion, it
3 appears it's only a matter of time before someone is seriously
4 injured if this behavior is allowed to continue.

5 He continued to show a disregard for human life by
6 shooting at members of the public, shooting into the air,
7 shooting into residences and buildings. Certainly this
8 defendant is a danger to the community.

9 As such, I determined that a sentence above the
10 guideline range results in a reasonable sentence and takes
11 into consideration the history and characteristics of
12 Mr. Rahimi, the nature and circumstances of this offense and
13 the seriousness of the offense to promote respect for the law
14 and protect the public from further crimes of this defendant.
15 I would have made this decision even without the Government's
16 motion.

17 In determining the sentence, the Court considered
18 the advisory guidelines, as well as the other statutory
19 directives listed at 18 United States Code, Section 3553(a).
20 It was my determination that a 73-month sentence, taking into
21 account the five months the defendant has been in state
22 custody, and a three-year term of supervised release, was
23 sufficient, but not greater than necessary, to comply with the
24 purposes set forth in paragraph 2 of Section 3553(a), reflects
25 the seriousness of and provides a just punishment for the

1 offense, promotes respect for the law and affords adequate
2 deterrence to criminal conduct, as well as protecting the
3 public from further crimes of this defendant.

4 Even if my guideline calculations here today are
5 later shown to be incorrect based on the facts and
6 circumstances of this case that I have considered, this is the
7 same sentence that I would have imposed otherwise simply
8 looking at the guidelines, simply looking at the factors set
9 forth in 3553(a).

10 I will make a nonbinding recommendation the
11 defendant be able to serve his sentence at either the FCI
12 Pollock or Seagoville facilities, if he so qualifies. Again,
13 that's a recommendation only, I don't control placement by the
14 BOP.

15 So, I have now stated the sentence and the reasons
16 therefor. Is there any reason why it should not be imposed as
17 stated, either from the Government or you, Ms. Taft?

18 **MR. GATTO:** No, Your Honor. Not from the
19 Government.

20 **MS. TAFT:** Your Honor, we'd object on the record to
21 the substantive reasonableness of the sentence, as well as the
22 procedural reasonableness.

23 **THE COURT:** Okay. I understand substantive
24 reasonableness, in that you think the sentence is too high.

25 What is the procedural objection?

1 **MS. TAFT:** Yes, Your Honor. Just that the Court
2 considered the lack of the unreliable evidence contained in
3 paragraphs 50 through 60 when determining the sentence.

4 **THE COURT:** Okay. For the reasons previously
5 stated, those objections are overruled. The sentence will be
6 imposed as stated.

7 I do need to briefly inform you of your appellate
8 rights, Mr. Rahimi. You do have the right to appeal the
9 sentence that I just imposed. You also need to know, if you
10 do decide to appeal on any ground, you also have the right to
11 apply for what's called leave to appeal in forma pauperis, if
12 you're unable to pay for the cost of an appeal.

13 Another document that you signed this morning is a
14 document called a Notice of Right to Appeal Sentence. You've
15 also signed that, as well as Ms. Taft, and it's been returned
16 to me. In that order, I'm outlining what your appellate
17 rights are. So, you need to be advised that's not your notice
18 to me that you're appealing your sentence that I just imposed.

19 Rather, if you do decide to appeal, you need keep
20 this in mind, you must appeal within 14 days, it must be in
21 writing and it must be filed with the Court. And Ms. Taft
22 will answer any questions you have in that regard.

23 At this time I will be remanding you to the custody
24 of the United States marshal. Thank you.

25 *(Proceedings Adjourned)*

REPORTER'S CERTIFICATE

3 I, Monica Willenburg Guzman, CSR, RPR, certify
4 that the foregoing is a true and correct transcript from
5 the record of proceedings in the foregoing entitled matter.

6 Further, the proceedings were held during the
7 COVID-19 Pandemic and some parties, including witnesses,
8 were speaking while wearing masks.

9 I further certify that the transcript fees format
10 comply with those prescribed by the Court and the Judicial
11 Conference of the United States.

13

/s/Monica Willenburg Guzman
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